

ASSEMBLY BILL

No. 2590

Introduced by Assembly Member Feuer

February 22, 2008

An act to amend Sections 12025, 12031, and 12072 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2590, as introduced, Feuer. Firearms: felonious conduct: criminal street gangs.

Existing law makes it a felony for a person who is an active participant in a criminal street gang to carry a concealed firearm, as specified, to carry a loaded firearm in a public place, as specified, or to unlawfully transfer a firearm, as specified.

This bill would set forth the definition of “criminal street gang” and “active participant” for purposes of those provisions.

Because this bill would expand the definition of an existing crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 12025 of the Penal Code is amended to read:

12025. (a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, ~~as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 commencing with Section 186.20) of Title 7 of Part 1~~, as a felony. *For purposes of this paragraph, "criminal street gang" is defined by subdivision (f) of Section 186.22 and "active participant" means the person's involvement with the gang is more than nominal or passive, as defined by the California Supreme Court in People v. Castenada (2000) 23 Cal.4th 743.*

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.

1 (6) By imprisonment in the state prison, or by imprisonment in
2 a county jail not to exceed one year, by a fine not to exceed one
3 thousand dollars (\$1,000), or by both that fine and imprisonment
4 if both of the following conditions are met:

5 (A) Both the pistol, revolver, or other firearm capable of being
6 concealed upon the person and the unexpended ammunition capable
7 of being discharged from that firearm are either in the immediate
8 possession of the person or readily accessible to that person, or
9 the pistol, revolver, or other firearm capable of being concealed
10 upon the person is loaded as defined in subdivision (g) of Section
11 12031.

12 (B) The person is not listed with the Department of Justice
13 pursuant to paragraph (1) of subdivision (c) of Section 11106, as
14 the registered owner of that pistol, revolver, or other firearm
15 capable of being concealed upon the person.

16 (7) In all cases other than those specified in paragraphs (1) to
17 (6), inclusive, by imprisonment in a county jail not to exceed one
18 year, by a fine not to exceed one thousand dollars (\$1,000), or by
19 both that imprisonment and fine.

20 (c) A peace officer may arrest a person for a violation of
21 paragraph (6) of subdivision (b) if the peace officer has probable
22 cause to believe that the person is not listed with the Department
23 of Justice pursuant to paragraph (1) of subdivision (c) of Section
24 11106 as the registered owner of the pistol, revolver, or other
25 firearm capable of being concealed upon the person, and one or
26 more of the conditions in subparagraph (A) of paragraph (6) of
27 subdivision (b) is met.

28 (d) (1) Every person convicted under this section who
29 previously has been convicted of a misdemeanor offense
30 enumerated in Section 12001.6 shall be punished by imprisonment
31 in a county jail for at least three months and not exceeding six
32 months, or, if granted probation, or if the execution or imposition
33 of sentence is suspended, it shall be a condition thereof that he or
34 she be imprisoned in a county jail for at least three months.

35 (2) Every person convicted under this section who has
36 previously been convicted of any felony, or of any crime made
37 punishable by this chapter, if probation is granted, or if the
38 execution or imposition of sentence is suspended, it shall be a
39 condition thereof that he or she be imprisoned in a county jail for
40 not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(g) For purposes of this section, “lawful possession of the firearm” means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

(h) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

SEC. 2. Section 12031 of the Penal Code is amended to read:

12031. (a) (1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(2) Carrying a loaded firearm in violation of this section is punishable, as follows:

1 (A) Where the person previously has been convicted of any
2 felony, or of any crime made punishable by this chapter, as a
3 felony.

4 (B) Where the firearm is stolen and the person knew or had
5 reasonable cause to believe that it was stolen, as a felony.

6 (C) Where the person is an active participant in a criminal street
7 gang, ~~as defined in subdivision (a) of Section 186.22, under the~~
8 ~~Street Terrorism Enforcement and Prevention Act (Chapter 11~~
9 ~~(commencing with Section 186.20) of Title 7 of Part 1),~~ as a felony.

10 *For purposes of this subparagraph, “criminal street gang” is*
11 *defined by subdivision (f) of Section 186.22 and “active*
12 *participant” means a person whose involvement with the gang is*
13 *more than nominal or passive, as defined by the California*
14 *Supreme Court in People v. Castenada (2000) 23 Cal.4th 743.*

15 (D) Where the person is not in lawful possession of the firearm,
16 as defined in this section, or is within a class of persons prohibited
17 from possessing or acquiring a firearm pursuant to Section 12021
18 or 12021.1 of this code or Section 8100 or 8103 of the Welfare
19 and Institutions Code, as a felony.

20 (E) Where the person has been convicted of a crime against a
21 person or property, or of a narcotics or dangerous drug violation,
22 by imprisonment in the state prison, or by imprisonment in a county
23 jail not to exceed one year, by a fine not to exceed one thousand
24 dollars (\$1,000), or by both that imprisonment and fine.

25 (F) Where the person is not listed with the Department of Justice
26 pursuant to Section 11106, as the registered owner of the pistol,
27 revolver, or other firearm capable of being concealed upon the
28 person, by imprisonment in the state prison, or by imprisonment
29 in a county jail not to exceed one year, or by a fine not to exceed
30 one thousand dollars (\$1,000), or both that fine and imprisonment.

31 (G) In all cases other than those specified in subparagraphs (A)
32 to (F), inclusive, as a misdemeanor, punishable by imprisonment
33 in a county jail not to exceed one year, by a fine not to exceed one
34 thousand dollars (\$1,000), or by both that imprisonment and fine.

35 (3) For purposes of this section, “lawful possession of the
36 firearm” means that the person who has possession or custody of
37 the firearm either lawfully acquired and lawfully owns the firearm
38 or has the permission of the lawful owner or person who otherwise
39 has apparent authority to possess or have custody of the firearm.

40 A person who takes a firearm without the permission of the lawful

1 owner or without the permission of a person who has lawful
2 custody of the firearm does not have lawful possession of the
3 firearm.

4 (4) Nothing in this section shall preclude prosecution under
5 Sections 12021 and 12021.1 of this code, Section 8100 or 8103 of
6 the Welfare and Institutions Code, or any other law with a greater
7 penalty than this section.

8 (5) (A) Notwithstanding paragraphs (2) and (3) of subdivision
9 (a) of Section 836, a peace officer may make an arrest without a
10 warrant:

11 (i) When the person arrested has violated this section, although
12 not in the officer's presence.

13 (ii) Whenever the officer has reasonable cause to believe that
14 the person to be arrested has violated this section, whether or not
15 this section has, in fact, been violated.

16 (B) A peace officer may arrest a person for a violation of
17 subparagraph (F) of paragraph (2), if the peace officer has probable
18 cause to believe that the person is carrying a loaded pistol, revolver,
19 or other firearm capable of being concealed upon the person in
20 violation of this section and that person is not listed with the
21 Department of Justice pursuant to paragraph (1) of subdivision (c)
22 of Section 11106 as the registered owner of that pistol, revolver,
23 or other firearm capable of being concealed upon the person.

24 (6) (A) Every person convicted under this section who has
25 previously been convicted of an offense enumerated in Section
26 12001.6, or of any crime made punishable under this chapter, shall
27 serve a term of at least three months in a county jail, or, if granted
28 probation or if the execution or imposition of sentence is
29 suspended, it shall be a condition thereof that he or she be
30 imprisoned for a period of at least three months.

31 (B) The court shall apply the three-month minimum sentence
32 except in unusual cases where the interests of justice would best
33 be served by granting probation or suspending the imposition or
34 execution of sentence without the minimum imprisonment required
35 in this subdivision or by granting probation or suspending the
36 imposition or execution of sentence with conditions other than
37 those set forth in this subdivision, in which case, the court shall
38 specify on the record and shall enter on the minutes the
39 circumstances indicating that the interests of justice would best be
40 served by that disposition.

1 (7) A violation of this section which is punished by
2 imprisonment in a county jail not exceeding one year shall not
3 constitute a conviction of a crime punishable by imprisonment for
4 a term exceeding one year for the purposes of determining federal
5 firearms eligibility under Section 922(g)(1) of Title 18 of the
6 United States Code.

7 (b) Subdivision (a) shall not apply to any of the following:

8 (1) Peace officers listed in Section 830.1 or 830.2, or subdivision
9 (a) of Section 830.33, whether active or honorably retired, other
10 duly appointed peace officers, honorably retired peace officers
11 listed in subdivision (c) of Section 830.5, other honorably retired
12 peace officers who during the course and scope of their
13 employment as peace officers were authorized to, and did, carry
14 firearms, full-time paid peace officers of other states and the federal
15 government who are carrying out official duties while in California,
16 or any person summoned by any of those officers to assist in
17 making arrests or preserving the peace while the person is actually
18 engaged in assisting that officer. Any peace officer described in
19 this paragraph who has been honorably retired shall be issued an
20 identification certificate by the law enforcement agency from which
21 the officer has retired. The issuing agency may charge a fee
22 necessary to cover any reasonable expenses incurred by the agency
23 in issuing certificates pursuant to this paragraph and paragraph
24 (3).

25 Any officer, except an officer listed in Section 830.1 or 830.2,
26 subdivision (a) of Section 830.33, or subdivision (c) of Section
27 830.5 who retired prior to January 1, 1981, shall have an
28 endorsement on the identification certificate stating that the issuing
29 agency approves the officer's carrying of a loaded firearm.

30 No endorsement or renewal endorsement issued pursuant to
31 paragraph (2) shall be effective unless it is in the format set forth
32 in subparagraph (D) of paragraph (1) of subdivision (a) of Section
33 12027, except that any peace officer listed in subdivision (f) of
34 Section 830.2 or in subdivision (c) of Section 830.5, who is retired
35 between January 2, 1981, and on or before December 31, 1988,
36 and who is authorized to carry a loaded firearm pursuant to this
37 section, shall not be required to have an endorsement in the format
38 set forth in subparagraph (D) of paragraph (1) of subdivision (a)
39 of Section 12027 until the time of the issuance, on or after January
40 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke for good cause the retired officer's privilege to carry a loaded firearm. A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have his or her privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

(3) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977, or (B) if hired on or after that date, if they have received a

1 firearms qualification card from the Department of Consumer
2 Affairs, in each case while acting within the course and scope of
3 their employment.

4 (8) Upon approval of the sheriff of the county in which they
5 reside, honorably retired federal officers or agents of federal law
6 enforcement agencies, including, but not limited to, the Federal
7 Bureau of Investigation, the Secret Service, the United States
8 Customs Service, the Federal Bureau of Alcohol, Tobacco, and
9 Firearms, the Federal Bureau of Narcotics, the Drug Enforcement
10 Administration, the United States Border Patrol, and officers or
11 agents of the Internal Revenue Service who were authorized to
12 carry weapons while on duty, who were assigned to duty within
13 the state for a period of not less than one year, or who retired from
14 active service in the state.

15 Retired federal officers or agents shall provide the sheriff with
16 certification from the agency from which they retired certifying
17 their service in the state, the nature of their retirement, and
18 indicating the agency's concurrence that the retired federal officer
19 or agent should be accorded the privilege of carrying a loaded
20 firearm.

21 Upon approval, the sheriff shall issue a permit to the retired
22 federal officer or agent indicating that he or she may carry a loaded
23 firearm in accordance with this paragraph. The permit shall be
24 valid for a period not exceeding five years, shall be carried by the
25 retiree while carrying a loaded firearm, and may be revoked for
26 good cause.

27 The sheriff of the county in which the retired federal officer or
28 agent resides may require recertification prior to a permit renewal,
29 and may suspend the privilege for cause. The sheriff may charge
30 a fee necessary to cover any reasonable expenses incurred by the
31 county.

32 (c) Subdivision (a) shall not apply to any of the following who
33 have completed a regular course in firearms training approved by
34 the Commission on Peace Officer Standards and Training:

35 (1) Patrol special police officers appointed by the police
36 commission of any city, county, or city and county under the
37 express terms of its charter who also, under the express terms of
38 the charter, (A) are subject to suspension or dismissal after a
39 hearing on charges duly filed with the commission after a fair and
40 impartial trial, (B) are not less than 18 years of age or more than

1 40 years of age, (C) possess physical qualifications prescribed by
2 the commission, and (D) are designated by the police commission
3 as the owners of a certain beat or territory as may be fixed from
4 time to time by the police commission.

5 (2) The carrying of weapons by animal control officers or
6 zookeepers, regularly compensated as such by a governmental
7 agency when acting in the course and scope of their employment
8 and when designated by a local ordinance or, if the governmental
9 agency is not authorized to act by ordinance, by a resolution, either
10 individually or by class, to carry the weapons, or by persons who
11 are authorized to carry the weapons pursuant to Section 14502 of
12 the Corporations Code, while actually engaged in the performance
13 of their duties pursuant to that section.

14 (3) Harbor police officers designated pursuant to Section 663.5
15 of the Harbors and Navigation Code.

16 (d) Subdivision (a) shall not apply to any of the following who
17 have been issued a certificate pursuant to Section 12033. The
18 certificate shall not be required of any person who is a peace
19 officer, who has completed all training required by law for the
20 exercise of his or her power as a peace officer, and who is
21 employed while not on duty as a peace officer.

22 (1) Guards or messengers of common carriers, banks, and other
23 financial institutions while actually employed in and about the
24 shipment, transportation, or delivery of any money, treasure,
25 bullion, bonds, or other thing of value within this state.

26 (2) Guards of contract carriers operating armored vehicles
27 pursuant to California Highway Patrol and Public Utilities
28 Commission authority (A) if hired prior to January 1, 1977, or (B)
29 if hired on or after January 1, 1977, if they have completed a course
30 in the carrying and use of firearms which meets the standards
31 prescribed by the Department of Consumer Affairs.

32 (3) Private investigators and private patrol operators who are
33 licensed pursuant to Chapter 11.5 (commencing with Section 7512)
34 of, and alarm company operators who are licensed pursuant to
35 Chapter 11.6 (commencing with Section 7590) of, Division 3 of
36 the Business and Professions Code, while acting within the course
37 and scope of their employment.

38 (4) Uniformed security guards or night watch persons employed
39 by any public agency, while acting within the scope and course of
40 their employment.

1 (5) Uniformed security guards, regularly employed and
2 compensated in that capacity by persons engaged in any lawful
3 business, and uniformed alarm agents employed by an alarm
4 company operator, while actually engaged in protecting and
5 preserving the property of their employers or on duty or en route
6 to or from their residences or their places of employment, and
7 security guards and alarm agents en route to or from their
8 residences or employer-required range training. Nothing in this
9 paragraph shall be construed to prohibit cities and counties from
10 enacting ordinances requiring alarm agents to register their names.

11 (6) Uniformed employees of private patrol operators and private
12 investigators licensed pursuant to Chapter 11.5 (commencing with
13 Section 7512) of Division 3 of the Business and Professions Code,
14 while acting within the course and scope of their employment.

15 (e) In order to determine whether or not a firearm is loaded for
16 the purpose of enforcing this section, peace officers are authorized
17 to examine any firearm carried by anyone on his or her person or
18 in a vehicle while in any public place or on any public street in an
19 incorporated city or prohibited area of an unincorporated territory.
20 Refusal to allow a peace officer to inspect a firearm pursuant to
21 this section constitutes probable cause for arrest for violation of
22 this section.

23 (f) As used in this section, “prohibited area” means any place
24 where it is unlawful to discharge a weapon.

25 (g) A firearm shall be deemed to be loaded for the purposes of
26 this section when there is an unexpended cartridge or shell,
27 consisting of a case that holds a charge of powder and a bullet or
28 shot, in, or attached in any manner to, the firearm, including, but
29 not limited to, in the firing chamber, magazine, or clip thereof
30 attached to the firearm; except that a muzzle-loader firearm shall
31 be deemed to be loaded when it is capped or primed and has a
32 powder charge and ball or shot in the barrel or cylinder.

33 (h) Nothing in this section shall prevent any person engaged in
34 any lawful business, including a nonprofit organization, or any
35 officer, employee, or agent authorized by that person for lawful
36 purposes connected with that business, from having a loaded
37 firearm within the person’s place of business, or any person in
38 lawful possession of private property from having a loaded firearm
39 on that property.

1 (i) Nothing in this section shall prevent any person from carrying
2 a loaded firearm in an area within an incorporated city while
3 engaged in hunting, provided that the hunting at that place and
4 time is not prohibited by the city council.

5 (j) (1) Nothing in this section is intended to preclude the
6 carrying of any loaded firearm, under circumstances where it would
7 otherwise be lawful, by a person who reasonably believes that the
8 person or property of himself or herself or of another is in
9 immediate, grave danger and that the carrying of the weapon is
10 necessary for the preservation of that person or property. As used
11 in this subdivision, “immediate” means the brief interval before
12 and after the local law enforcement agency, when reasonably
13 possible, has been notified of the danger and before the arrival of
14 its assistance.

15 (2) A violation of this section is justifiable when a person who
16 possesses a firearm reasonably believes that he or she is in grave
17 danger because of circumstances forming the basis of a current
18 restraining order issued by a court against another person or persons
19 who has or have been found to pose a threat to his or her life or
20 safety. This paragraph may not apply when the circumstances
21 involve a mutual restraining order issued pursuant to Division 10
22 (commencing with Section 6200) of the Family Code absent a
23 factual finding of a specific threat to the person’s life or safety. It
24 is not the intent of the Legislature to limit, restrict, or narrow the
25 application of current statutory or judicial authority to apply this
26 or other justifications to defendants charged with violating Section
27 12025 or of committing other similar offenses.

28 Upon trial for violating this section, the trier of fact shall
29 determine whether the defendant was acting out of a reasonable
30 belief that he or she was in grave danger.

31 (k) Nothing in this section is intended to preclude the carrying
32 of a loaded firearm by any person while engaged in the act of
33 making or attempting to make a lawful arrest.

34 (l) Nothing in this section shall prevent any person from having
35 a loaded weapon, if it is otherwise lawful, at his or her place of
36 residence, including any temporary residence or campsite.

37 (m) (1) The district attorney of each county shall submit
38 annually a report on or before June 30, to the Attorney General
39 consisting of profiles by race, age, gender, and ethnicity of any
40 person charged with a felony or a misdemeanor under this section

1 and any other offense charged in the same complaint, indictment,
2 or information.

3 (2) The Attorney General shall submit annually, a report on or
4 before December 31, to the Legislature compiling all of the reports
5 submitted pursuant to paragraph (1).

6 (3) This subdivision shall remain operative only until January
7 1, 2005.

8 SEC. 3. Section 12072 of the Penal Code is amended to read:

9 12072. (a) (1) No person, corporation, or firm shall knowingly
10 supply, deliver, sell, or give possession or control of a firearm to
11 any person within any of the classes prohibited by Section 12021
12 or 12021.1.

13 (2) No person, corporation, or dealer shall sell, supply, deliver,
14 or give possession or control of a firearm to any person whom he
15 or she has cause to believe to be within any of the classes
16 prohibited by Section 12021 or 12021.1 of this code or Section
17 8100 or 8103 of the Welfare and Institutions Code.

18 (3) (A) No person, corporation, or firm shall sell, loan, or
19 transfer a firearm to a minor, nor sell a handgun to an individual
20 under 21 years of age.

21 (B) Subparagraph (A) shall not apply to or affect those
22 circumstances set forth in subdivision (p) of Section 12078.

23 (4) No person, corporation, or dealer shall sell, loan, or transfer
24 a firearm to any person whom he or she knows or has cause to
25 believe is not the actual purchaser or transferee of the firearm, or
26 to any person who is not the person actually being loaned the
27 firearm, if the person, corporation, or dealer has either of the
28 following:

29 (A) Knowledge that the firearm is to be subsequently loaned,
30 sold, or transferred to avoid the provisions of subdivision (c) or
31 (d).

32 (B) Knowledge that the firearm is to be subsequently loaned,
33 sold, or transferred to avoid the requirements of any exemption to
34 the provisions of subdivision (c) or (d).

35 (5) No person, corporation, or dealer shall acquire a firearm for
36 the purpose of selling, transferring, or loaning the firearm, if the
37 person, corporation, or dealer has either of the following:

38 (A) In the case of a dealer, intent to violate subdivision (b) or
39 (c).

40 (B) In any other case, intent to avoid either of the following:

- 1 (i) The provisions of subdivision (d).
2 (ii) The requirements of any exemption to the provisions of
3 subdivision (d).
4 (6) The dealer shall comply with the provisions of paragraph
5 (18) of subdivision (b) of Section 12071.
6 (7) The dealer shall comply with the provisions of paragraph
7 (19) of subdivision (b) of Section 12071.
8 (8) No person shall sell or otherwise transfer his or her
9 ownership in a pistol, revolver, or other firearm capable of being
10 concealed upon the person unless the firearm bears either:
11 (A) The name of the manufacturer, the manufacturer's make or
12 model, and a manufacturer's serial number assigned to that firearm.
13 (B) The identification number or mark assigned to the firearm
14 by the Department of Justice pursuant to Section 12092.
15 (9) (A) No person shall make an application to purchase more
16 than one pistol, revolver, or other firearm capable of being
17 concealed upon the person within any 30-day period.
18 (B) Subparagraph (A) shall not apply to any of the following:
19 (i) Any law enforcement agency.
20 (ii) Any agency duly authorized to perform law enforcement
21 duties.
22 (iii) Any state or local correctional facility.
23 (iv) Any private security company licensed to do business in
24 California.
25 (v) Any person who is properly identified as a full-time paid
26 peace officer, as defined in Chapter 4.5 (commencing with Section
27 830) of Title 3 of Part 2, and who is authorized to, and does carry
28 a firearm during the course and scope of his or her employment
29 as a peace officer.
30 (vi) Any motion picture, television, or video production
31 company or entertainment or theatrical company whose production
32 by its nature involves the use of a firearm.
33 (vii) Any person who may, pursuant to Section 12078, claim
34 an exemption from the waiting period set forth in subdivision (c)
35 of this section.
36 (viii) Any transaction conducted through a licensed firearms
37 dealer pursuant to Section 12082.
38 (ix) Any person who is licensed as a collector pursuant to
39 Chapter 44 (commencing with Section 921) of Title 18 of the
40 United States Code and the regulations issued pursuant thereto

1 and who has a current certificate of eligibility issued to him or her
2 by the Department of Justice pursuant to Section 12071.

3 (x) The exchange of a pistol, revolver, or other firearm capable
4 of being concealed upon the person where the dealer purchased
5 that firearm from the person seeking the exchange within the
6 30-day period immediately preceding the date of exchange or
7 replacement.

8 (xi) The replacement of a pistol, revolver, or other firearm
9 capable of being concealed upon the person when the person's
10 pistol, revolver, or other firearm capable of being concealed upon
11 the person was lost or stolen, and the person reported that firearm
12 lost or stolen prior to the completion of the application to purchase
13 to any local law enforcement agency of the city, county, or city
14 and county in which he or she resides.

15 (xii) The return of any pistol, revolver, or other firearm capable
16 of being concealed upon the person to its owner.

17 (b) No person licensed under Section 12071 shall supply, sell,
18 deliver, or give possession or control of a pistol, revolver, or
19 firearm capable of being concealed upon the person to any person
20 under the age of 21 years or any other firearm to a person under
21 the age of 18 years.

22 (c) No dealer, whether or not acting pursuant to Section 12082,
23 shall deliver a firearm to a person, as follows:

24 (1) Within 10 days of the application to purchase, or, after notice
25 by the department pursuant to subdivision (d) of Section 12076,
26 within 10 days of the submission to the department of any
27 correction to the application, or within 10 days of the submission
28 to the department of any fee required pursuant to subdivision (e)
29 of Section 12076, whichever is later.

30 (2) Unless unloaded and securely wrapped or unloaded and in
31 a locked container.

32 (3) Unless the purchaser, transferee, or person being loaned the
33 firearm presents clear evidence of his or her identity and age, as
34 defined in Section 12071, to the dealer.

35 (4) Whenever the dealer is notified by the Department of Justice
36 that the person is in a prohibited class described in Section 12021
37 or 12021.1 of this code or Section 8100 or 8103 of the Welfare
38 and Institutions Code.

39 (5) (A) Commencing April 1, 1994, and until January 1, 2003,
40 no pistol, revolver, or other firearm capable of being concealed

1 upon the person shall be delivered unless the purchaser, transferee,
2 or person being loaned the firearm presents to the dealer a basic
3 firearms safety certificate.

4 (B) Commencing January 1, 2003, no handgun shall be delivered
5 unless the purchaser, transferee, or person being loaned the
6 handgun presents a handgun safety certificate to the dealer.

7 (6) No pistol, revolver, or other firearm capable of being
8 concealed upon the person shall be delivered whenever the dealer
9 is notified by the Department of Justice that within the preceding
10 30-day period the purchaser has made another application to
11 purchase a pistol, revolver, or other firearm capable of being
12 concealed upon the person and that the previous application to
13 purchase involved none of the entities specified in subparagraph
14 (B) of paragraph (9) of subdivision (a).

15 (d) Where neither party to the transaction holds a dealer's license
16 issued pursuant to Section 12071, the parties to the transaction
17 shall complete the sale, loan, or transfer of that firearm through a
18 licensed firearms dealer pursuant to Section 12082.

19 (e) No person may commit an act of collusion relating to Article
20 8 (commencing with Section 12800) of Chapter 6. For purposes
21 of this section and Section 12071, collusion may be proven by any
22 one of the following factors:

23 (1) Answering a test applicant's questions during an objective
24 test relating to firearms safety.

25 (2) Knowingly grading the examination falsely.

26 (3) Providing an advance copy of the test to an applicant.

27 (4) Taking or allowing another person to take the basic firearms
28 safety course for one who is the applicant for a basic firearms
29 safety certificate or a handgun safety certificate.

30 (5) Allowing another to take the objective test for the applicant,
31 purchaser, or transferee.

32 (6) Using or allowing another to use one's identification, proof
33 of residency, or thumbprint.

34 (7) Allowing others to give unauthorized assistance during the
35 examination.

36 (8) Reference to unauthorized materials during the examination
37 and cheating by the applicant.

38 (9) Providing originals or photocopies of the objective test, or
39 any version thereof, to any person other than as authorized by the
40 department.

1 (f) (1) (A) Commencing July 1, 2008, a person who is licensed
2 pursuant to Chapter 44 (commencing with Section 921) of Title
3 18 of the United States Code may not deliver, sell, or transfer a
4 firearm to a person in California who is licensed pursuant to
5 Chapter 44 (commencing with Section 921) of Title 18 of the
6 United States Code unless, prior to delivery, the person intending
7 to deliver, sell, or transfer the firearm obtains a verification number
8 via the Internet for the intended delivery, sale, or transfer, from
9 the department. If Internet service is unavailable to either the
10 department or the licensee due to a technical or other malfunction,
11 or a federal firearms licensee who is located outside of California
12 does not possess a computer or have Internet access, alternate
13 means of communication, including facsimile or telephone, shall
14 be made available for a licensee to obtain a verification number
15 in order to comply with this section. This subdivision shall not
16 apply to the delivery, sale, or transfer of a short-barreled rifle, or
17 short-barreled shotgun, as defined in Section 12020, or to a
18 machinegun as defined in Section 12200, or to an assault weapon
19 as defined in Sections 12276, 12276.1, and 12276.5.

20 (B) For every identification number request received pursuant
21 to this section, the department shall determine whether the intended
22 recipient is on the centralized list of firearms dealers pursuant to
23 this section, or the centralized list of exempted federal firearms
24 licensees pursuant to subdivision (a) of Section 12083, or the
25 centralized list of firearms manufacturers pursuant to subdivision
26 (f) of Section 12086.

27 (C) If the department finds that the intended recipient is on one
28 of these lists, the department shall issue to the inquiring party, a
29 unique identification number for the intended delivery, sale, or
30 transfer. In addition to the unique verification number, the
31 department may provide to the inquiring party information
32 necessary for determining the eligibility of the intended recipient
33 to receive the firearm. The person intending to deliver, sell, or
34 transfer the firearm shall provide the unique verification number
35 to the recipient along with the firearm upon delivery, in a manner
36 to be determined by the department.

37 (D) If the department finds that the intended recipient is not on
38 one of these lists, the department shall notify the inquiring party
39 that the intended recipient is ineligible to receive the firearm.

1 (E) The department shall prescribe the manner in which the
2 verification numbers may be requested via the Internet, or by
3 alternate means of communication, such as by facsimile or
4 telephone, including all required enrollment information and
5 procedures.

6 (2) (A) On or after January 1, 1998, within 60 days of bringing
7 a pistol, revolver, or other firearm capable of being concealed upon
8 the person into this state, a personal handgun importer shall do
9 one of the following:

10 (i) Forward by prepaid mail or deliver in person to the
11 Department of Justice, a report prescribed by the department
12 including information concerning that individual and a description
13 of the firearm in question.

14 (ii) Sell or transfer the firearm in accordance with the provisions
15 of subdivision (d) or in accordance with the provisions of an
16 exemption from subdivision (d).

17 (iii) Sell or transfer the firearm to a dealer licensed pursuant to
18 Section 12071.

19 (iv) Sell or transfer the firearm to a sheriff or police department.

20 (B) If the personal handgun importer sells or transfers the pistol,
21 revolver, or other firearm capable of being concealed upon the
22 person pursuant to subdivision (d) of Section 12072 and the sale
23 or transfer cannot be completed by the dealer to the purchaser or
24 transferee, and the firearm can be returned to the personal handgun
25 importer, the personal handgun importer shall have complied with
26 the provisions of this paragraph.

27 (C) The provisions of this paragraph are cumulative and shall
28 not be construed as restricting the application of any other law.
29 However, an act or omission punishable in different ways by this
30 section and different provisions of the Penal Code shall not be
31 punished under more than one provision.

32 (D) (i) On and after January 1, 1998, the department shall
33 conduct a public education and notification program regarding this
34 paragraph to ensure a high degree of publicity of the provisions
35 of this paragraph.

36 (ii) As part of the public education and notification program
37 described in this subparagraph, the department shall do all of the
38 following:

39 (I) Work in conjunction with the Department of Motor Vehicles
40 to ensure that any person who is subject to this paragraph is advised

1 of the provisions of this paragraph, and provided with blank copies
2 of the report described in clause (i) of subparagraph (A) at the time
3 that person applies for a California driver's license or registers his
4 or her motor vehicle in accordance with the Vehicle Code.

5 (II) Make the reports referred to in clause (i) of subparagraph
6 (A) available to dealers licensed pursuant to Section 12071.

7 (III) Make the reports referred to in clause (i) of subparagraph
8 (A) available to law enforcement agencies.

9 (IV) Make persons subject to the provisions of this paragraph
10 aware of the fact that reports referred to in clause (i) of
11 subparagraph (A) may be completed at either the licensed premises
12 of dealers licensed pursuant to Section 12071 or at law enforcement
13 agencies, that it is advisable to do so for the sake of accuracy and
14 completeness of the reports, that prior to transporting a pistol,
15 revolver, or other firearm capable of being concealed upon the
16 person to a law enforcement agency in order to comply with
17 subparagraph (A), the person should give prior notice to the law
18 enforcement agency that he or she is doing so, and that in any
19 event, the pistol, revolver, or other firearm capable of being
20 concealed upon the person should be transported unloaded and in
21 a locked container.

22 (iii) Any costs incurred by the department to implement this
23 paragraph shall be absorbed by the department within its existing
24 budget and the fees in the Dealers' Record of Sale Special Account
25 allocated for implementation of this subparagraph pursuant to
26 Section 12076.

27 (3) Where a person who is licensed as a collector pursuant to
28 Chapter 44 (commencing with Section 921) of Title 18 of the
29 United States Code and the regulations issued pursuant thereto,
30 whose licensed premises are within this state, acquires a pistol,
31 revolver, or other firearm capable of being concealed upon the
32 person that is a curio or relic, as defined in Section 478.11 of Title
33 27 of the Code of Federal Regulations, outside of this state, takes
34 actual possession of that firearm outside of this state pursuant to
35 the provisions of subsection (j) of Section 923 of Title 18 of the
36 United States Code, as amended by Public Law 104-208, and
37 transports that firearm into this state, within five days of that
38 licensed collector transporting that firearm into this state, he or
39 she shall report to the department in a format prescribed by the
40 department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a “continuing offense” and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2), (3), or (5), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating the provisions, other than paragraph (9) of subdivision (a), of this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a “criminal street gang” ~~as defined in Section 186.22.~~

For purposes of this subparagraph “criminal street gang” is defined by subdivision (f) of Section 186.22 and “actively participates” means the person’s involvement with the gang is more than nominal or passive, as defined by the California Supreme Court in People v. Castenada (2000) 23 Cal.4th 743.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not

1 exceeding one year or in the state prison, or by a fine not to exceed
2 one thousand dollars (\$1,000), or by both that fine and
3 imprisonment.

4 (A) A violation of paragraph (2), (4), or (5) of subdivision (a).

5 (B) A violation of paragraph (3) of subdivision (a) involving
6 the sale, loan, or transfer of a pistol, revolver, or other firearm
7 capable of being concealed upon the person to a minor.

8 (C) A violation of subdivision (b) involving the delivery of a
9 pistol, revolver, or other firearm capable of being concealed upon
10 the person.

11 (D) A violation of paragraph (1), (3), (4), (5), or (6) of
12 subdivision (c) involving a pistol, revolver, or other firearm capable
13 of being concealed upon the person.

14 (E) A violation of subdivision (d) involving a pistol, revolver,
15 or other firearm capable of being concealed upon the person.

16 (F) A violation of subdivision (e).

17 (4) If both of the following circumstances apply, an additional
18 term of imprisonment in the state prison for one, two, or three
19 years shall be imposed in addition and consecutive to the sentence
20 prescribed.

21 (A) A violation of paragraph (2) of subdivision (a) or subdivision
22 (b).

23 (B) The firearm transferred in violation of paragraph (2) of
24 subdivision (a) or subdivision (b) is used in the subsequent
25 commission of a felony for which a conviction is obtained and the
26 prescribed sentence is imposed.

27 (5) (A) A first violation of paragraph (9) of subdivision (a) is
28 an infraction punishable by a fine of fifty dollars (\$50).

29 (B) A second violation of paragraph (9) of subdivision (a) is an
30 infraction punishable by a fine of one hundred dollars (\$100).

31 (C) A third or subsequent violation of paragraph (9) of
32 subdivision (a) is a misdemeanor.

33 (D) For purposes of this paragraph each application to purchase
34 a pistol, revolver, or other firearm capable of being concealed upon
35 the person in violation of paragraph (9) of subdivision (a) shall be
36 deemed a separate offense.

37 SEC. 4. It is the intent of the Legislature in enacting this
38 measure to clarify existing law with respect to the definition of
39 “active participant in a criminal street gang” and abrogate the
40 decisions of the California Supreme Court in *People v. Robles*

1 (2000) 23 Cal.4th 1106 and *People v. Lamas* (2007) 42 Cal.4th
2 516. The definition of “active participant” and “actively
3 participates” as added by this measure is not intended to be a
4 change in existing law, but rather declaratory of existing law as
5 set forth by the California Supreme Court in *People v. Castenada*
6 (2000) 23 Cal.4th 743.

7 SEC. 5. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.